



Billing Code: 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R08-OAR-2014-0183; FRL-9918-20-Region 8]

#### Approval and Promulgation of Implementation Plans; Wyoming; Revisions to the Air Quality Standards and Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving changes to Wyoming's State Implementation Plan (SIP). On February 10, 2014, the Wyoming Department of Environmental Quality (WDEQ) submitted to EPA revisions to the Wyoming SIP. These revisions included the removal of an exemption from Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 3, section 2(d). In this action, EPA is approving the revision of this provision into the SIP because the revision is consistent with Clean Air Act (CAA) requirements. The revision will correct certain deficiencies related to the treatment of excess emissions from sources. EPA will address the remaining revisions from Wyoming's February 10, 2014 submission in a separate action.

**DATES:** This final rule is effective [INSERT date 30 days after publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R08-OAR-2014-0183. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air

Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Adam Clark, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-7104, [clark.adam@epa.gov](mailto:clark.adam@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (iii) The initials IBR mean or refer to incorporation by reference.
- (iv) The initials SIP mean or refer to state implementation plan.
- (v) The initials SSM mean or refer to startup, shutdown, and malfunction.
- (vi) The words State or Wyoming mean the State of Wyoming, unless the context indicates otherwise.
- (vii) The initials WAQSR mean or refer to the Wyoming Air Quality Standards and Regulations.

- (viii) The initials WDEQ mean or refer to the Wyoming Department of Environmental Quality.

## **I. Background**

On February 10, 2014, WDEQ submitted to EPA a SIP revision to WAQSR Chapter 3, section 2(d), as well as updates to the State's incorporation by reference (IBR) of federal regulations. In a document published on July 16, 2014, we proposed approval of the State's revision to WAQSR Chapter 3, section 2(d); we did not propose to take any action on the remaining updates in the State's February 10, 2014 submittal (79 FR 41509).

In our proposed rule, we explained that, in accordance with the requirements of CAA section 110(a)(2)(A), SIPs must contain enforceable emission limitations and, in accordance with the definition of "emission limitations" in CAA section 302(k), such emission limitations must be continuous. In addition, under CAA section 304(a), any person may bring a civil action against any person alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of an "emission standard or limitation" under the CAA. For the purposes of section 304, "emission standard or limitation" is defined in section 304(f) and includes SIP emission limitations. Thus, SIP emission limitations can be enforced in a section 304 action and so must be capable of enforcement. SIP provisions that create exemptions such that excess emissions during startup, shutdown, malfunctions (SSM) and other conditions are not violations of the applicable emission limitations are inconsistent with these fundamental requirements of the CAA with respect to emission limitations in SIPs.

For these reasons, we proposed approval of Wyoming's revision of WAQSR Chapter 3, section 2(d). Previously, certain language in WAQSR Chapter 3, section 2(d) created an exemption for particulate matter emissions in excess of a 30 percent opacity standard from diesel

engines during startup, malfunction, and maintenance. Because this provision allowed exemptions from the otherwise applicable SIP emission limitation, it was inconsistent with CAA requirements. The State's revision to section 2(d) addresses this deficiency by removing the problematic language.

This revision is sufficient to correct the inadequacies contained within section 2(d) and is consistent with the requirements of the CAA. As a result of the revision, the improper exemptions from emissions limitations contained within section 2(d) will no longer be available to sources. Therefore, the emissions limitation in section 2(d) will become continuous and more enforceable.

## **II. Response to Comments**

The comment period for our July 16, 2014 document was open for 30 days. EPA received supportive comments on this proposed action from both WDEQ and the Sierra Club. WDEQ also requested that EPA act on the remainder of the February 10, 2014 submittal as expeditiously as possible. EPA acknowledges these comments.

## **III. EPA's Final Action**

We are approving the State's revision to WAQSR Chapter 3, section 2(d) of the Wyoming SIP, as reflected in the State's February 10, 2014 submission. This approval effectively corrects the deficiency with this provision of the Wyoming SIP, as discussed above, in our proposed rule, and in EPA's February 22, 2013 proposed national SSM SIP Call (78 FR 12533). Based on this final approval, EPA notes that the deficiency in the Wyoming SIP identified in the proposed SSM SIP call has now been correctly resolved. Thus, EPA's final action on the SSM SIP call should not need to address this deficiency. We are not taking action today on the remainder of the February 10, 2014 submission.

#### IV. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements

would be inconsistent with the CAA; and,

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 2, 2014.

Debra H. Thomas,  
Acting Regional Administrator,  
Region 8.

40 CFR part 52 is amended to read as follows:

## **PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

### **Subpart ZZ – Wyoming**

2. In §52.2620, the table titled “State of Wyoming Regulations” in paragraph (c)(1) is amended under Chapter 3 by revising the entry for Section 2 to read as follows:

#### **§ 52.2620 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

<b>State citation</b>	<b>Title/subject</b>	<b>State adopted and effective date</b>	<b>EPA approval date and citation<sup>1</sup></b>	<b>Explanations</b>
* * * * *	* * *			
<b>Chapter 3</b>				
Section 2	Emission standards for particulate matter	9/12/13, 11/22/13	[Insert <b>Federal Register</b> publication date], [insert <b>Federal Register</b> citation]	
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<sup>1</sup> In order to determine the EPA effective date for a specific provision that is listed in this table, consult the Federal Register cited in this column for that particular provision.

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